

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Crl.Revision No.450 of 1992
Date of Decision:- 07.02.2007**

Roop Singh

....Petitioner(s)

through
Mr.G.S.Bawa, Advocate

vs.

State of Haryana

....Respondent(s)

through
Mr.Tarun Aggarwal, Sr.DAG, Haryana.

CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

SURYA KANT, J.

This criminal revision is directed against the judgment and order dated 20.2.1991 passed by the learned Sub Divisional Judicial Magistrate, Dabwali whereby the petitioner was convicted under Section 9 of the Opium Act and was sentenced to undergo rigorous imprisonment for one year and six months with a fine of Rs.1,000/-, in default thereof he was required to undergo rigorous imprisonment for three months, as well as against the judgment dated 6.7.1992 passed by the learned Additional Sessions Judge, Sirsa, affirming the above-mentioned conviction and sentence of the petitioner.

The facts may be briefly noticed.

On July 6, 1985 at about 9.00 A.M. when the police party was on patrol duty and had reached near Takhatmal Barrier in a Government jeep, the Inspector CIA received a secret information against the petitioner to the effect that he was indulging in the sale of poppy straw and could be apprehended if raid was conducted promptly. Accordingly, the police party

went to the petitioner's house in village Kewal. On seeing the Police party, the petitioner attempted to escape but was nabbed by Head Constable Dharam Singh. Upon interrogation, the petitioner suffered a disclosure statement to the effect that he had kept concealed 14 bags of poppy straw in the house of one Mandar Singh Mehra who had left the village some 3-4 years earlier. Pursuant to his disclosure statement (Exhibit PA), the petitioner got recovered the 14 bags which contained 40 Kgs. of poppy straw each. Samples weighing 100 grams each were drawn and were separately sealed. Remaining case property was taken into possession vide memo Exhibit PB. Thereafter the case was formally registered in the Police Station, Kalanwali vide F.I.R. Exhibit PC/1.

The petitioner was charged under Section 9 of the Opium Act, 1878 to which he did not plead guilty and claimed trial. The prosecution examined two witnesses who were on patrol duty. The affidavits of some other police officials were also tendered into evidence. The petitioner too led his defence evidence in order to show that he was falsely implicated by the police out of revenge as a result of his acquittal in a case under Section 302 IPC in which he was earlier falsely implicated.

Both the Courts below, on appraisal and reappraisal of the aforesaid evidence, however, have disbelieved the petitioner's defence plea and have held him guilty under Section 9 of the Opium Act and consequently sentenced him as stated above.

This revision petition came up for preliminary hearing on July 22, 1992 when it was admitted and the sentence of imprisonment was ordered to be suspended, directing the petitioner's release on bail.

I have heard learned counsel for the petitioner as well as

learned State Counsel and have perused the impugned judgments. In my view, the contentions on merits like non-joining of an independent witness by the police; false implication of the petitioner because of his acquittal in a murder case and/or certain minor discrepancies in the statements of the prosecution witnesses, have been elaborately dealt with by the appellate Court and do not cut much ice, especially when in exercise of the revisional jurisdiction, this Court need not reappraise the evidence on record unless a strong case of perversity is made out.

Faced with the situation, Shri Bawa, learned counsel for the petitioner contends that the occurrence had taken place on 6-7-1985 i.e. about 22 years back and since then the petitioner has never been found involved in any such like case or for that matter in any other criminal case. He also contends that the petitioner was released on bail way-back on July 22, 1992 and he has never misused the said concession in any manner. It is also contended that out of the total sentence of one and a half year, the petitioner has already undergone actual sentence of four months and five days. According to learned counsel for the petitioner, the petitioner is now a grown up old person and it will be too harsh to send him to jail to undergo the remainder of the sentence.

On July 17, 2007, the learned State counsel was directed to get a report in relation to the petitioner's conduct after he was released on bail by this Court.

Shri Tarun Aggarwal, learned Sr.DAG, Haryana, on written instructions received by him, fairly states that the petitioner has not been reported to be involved in any other criminal case after the occurrence in question nor he is reported to have ever misused the concession of bail

granted by this Court.

After hearing learned counsel for the parties and having regard to the above-noticed mitigating circumstances highlighted by the learned counsel for the petitioner, I am of the considered view that as the occurrence had taken place about 22 years back and the petitioner has not misused the concession of bail for the last about 15 years and he has already undergone more than four months' actual sentence, it is a fit case to reduce the sentence of imprisonment awarded to the petitioner to the extent he has already undergone.

Consequently, the impugned judgments and order dated 20.2.1991 and 6.7.1992 passed by the learned Sub Divisional Judicial Magistrate, Dabwali and Additional Sessions Judge, Sirsa respectively are modified to the extent that instead of rigorous imprisonment for one and a half year, the said sentence will be to the extent of the period which the petitioner has already undergone. However, the fine of Rs.1,000/- imposed upon the petitioner deserves to be enhanced to Rs.5,000/-. I order accordingly. The petitioner is directed to deposit the enhanced amount of fine within a period of three months, failing which the petitioner shall be required to undergo rigorous imprisonment as awarded by the Courts below.

Disposed of.

February 07, 2007
poonam

(SURYA KANT)
JUDGE